

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Indian Health Service

**POLICY AND PROCEDURE FOR SENDING AND RECEIVING MEDICAL RECORDS
INFORMATION BY FACSIMILE**

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1. **PURPOSE**

The purpose of this circular is to establish policy and procedures for transmitting patient medical records by facsimile (FAX) which will best safeguard the confidentiality of such records in accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. § 552a and the HIPAA Privacy Rule. Due to the complex and distinct issues related to computer-based electronic transmission of medical records, this circular is not intended to address the safeguards necessary to ensure the confidentiality of that particular form of medical records transmission.

2. **BACKGROUND**

The FAX machine is a widely used means to instantly send and receive written documentation. Understandably, FAX machines are now used regularly to transmit medical records, as they are an important tool used both to assist in the provision of patient care and to facilitate the medical billing process. While no common methods of transmission of patient medical records are infallible with respect to security, the transmission of patient medical records via FAX machines raises legitimate concerns regarding the confidentiality of patient medical information. Without proper safeguards to ensure that medical records are faxed in accordance with strict protocols, there is significant risk that the confidentiality of those records will be compromised. In accordance with the express requirements set forth in the Privacy Act, it is incumbent upon IHS to “establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated embarrassment, inconvenience, or unfairness to any individual on whom information is obtained.” 5 U.S.C. § 552a(e)(10). The following policy is intended to establish such appropriate administrative, technical, and physical safeguards for the FAXing of patient medical records.

3. **DEFINITION**

- A. Medical Records. This policy covers the same categories of records as those identified as being part of the IHS Health and Medical Records System, 09-17-0001. See 58 Fed. Reg. 36209 (July 6, 1993).

- B. Emergency medical condition. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in: (1) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy; (2) serious impairment to bodily functions; or (3) serious dysfunction of any bodily organ or part.
- C. FAX Activity Confirmation (FAC) Report. A document automatically generated by the FAX machine that confirms whether the FAX transmission has been successful and which prints the destination FAX number.
- D. FAX Activity Report Journal (ARJ). The FAX Activity Report Journal (ARJ) is a manually generated log that may be used to identify how each incoming FAX was handled, confirm the successful transmission of each outgoing FAX, and/or identify any errors that have occurred in the sending or receiving of FAXes.
- E. Highly Sensitive Medical Records. Any patient medical records relating to: (1) testing for HIV or other sexually transmitted diseases, or treatment related to HIV or other sexually transmitted diseases; (2) testing for cancer or other life-threatening illnesses; or (3) the diagnosis, treatment, or referral for treatment of a mental illness and/or alcohol or substance abuse.

4. **POLICY**

It is policy of the Indian Health Service to ensure that patient medical records sent or received by IHS facilities are handled in a manner that protects against unauthorized disclosure of such records to third parties. Because the use of FAX machines poses certain risks of improper disclosure of confidential patient information, IHS facilities are encouraged to send and receive patient medical records by mail whenever practical. Transmission of patient medical records by FAX should be limited to the minimum amount necessary to accomplish the intended purpose. Furthermore, the means by which patient information is to be transmitted depends on the clinical circumstances. In any case involving a question as to the appropriateness of using the FAX machine to transmit patient medical information, the appropriate clinician shall make the final determination. Whenever it is necessary to FAX patient medical records, IHS facilities must comply with the procedures set forth in this circular.

5. **RESPONSIBILITIES**

It shall be the responsibility of all IHS staff to ensure compliance with the policies and procedures established in this circular.

6. **PROCEDURES**

Strict adherence to the following FAX procedures is required:

A. Prohibition Against FAXing Certain Highly Sensitive Medical Records

Except in cases involving an emergency medical condition where an IHS provider has determined that the transmission of medical records by FAX is necessary to assist in the treatment of the emergency medical condition, “highly sensitive medical records” (as defined in section 3.E above) shall not be FAXed by the facility, but instead must be sent by regular or express mail in an envelope marked **“Confidential: To be opened by addressee only.”** If a request to FAX highly sensitive medical records is made in connection with any legal proceeding, the appropriate service unit employee should immediately contact the applicable Regional Attorney for advice and assistance.

B. Authorized Personnel

Only individuals authorized pursuant to the policies and procedures of the particular IHS facility or Area Office shall FAX, or accept by FAX, patient medical records.

C. Location of FAX Machine

The FAX machine shall be physically located so that:

- (1) It is not in a public area.
- (2) Its use can be monitored by the person(s) designated by the facility to conduct such monitoring.
- (3) Only authorized staff can have direct access to the FAX machine.

D. Medical Records FAX Cover Page

Before transmitting any patient medical records, the sender must fill out a Medical Record FAX cover page containing, at a minimum, the following information:

- 1) Facility's Identification
- 2) Date of transmission
- 3) Number of pages being transmitted (including cover page)
- 4) To:
 - a) Authorized receiver's name
 - b) Authorized receiver's telephone number
 - c) Authorized receiver's FAX number
- 5) From:
 - a) Sender's name
 - b) Provider's name (if applicable)
 - c) Sender's telephone number
 - d) Sender's FAX number
- 6) Remarks or Special Instructions (if appropriate)
- 7) Confidentiality statement. The following is an example of an acceptable statement:

THIS FAX IS INTENDED ONLY FOR THE USE OF THE PERSON OR OFFICE TO WHOM IT IS ADDRESSED, AND CONTAINS PRIVILEGED OR CONFIDENTIAL INFORMATION PROTECTED BY LAW. ALL RECIPIENTS ARE HERBY NOTIFIED THAT INADVERTENT OR UNAUTHROIZED RECEIPT DOES NOT WAIVE SUCH PRIVILEGE, AND THAT UNATHORIZED DISSEMINATION, DISTRIBUTION, OR COPYINGOF THIS COMMUNICATION IS PROHIBITED. IF YOU HAVE RECEIVED THIS FAX IN ERROR, PLEASE DESTROY THE ATTACHED DOCUMENT(S) AND NOTIFY THE SENDER OF THE ERROR BY CALLING (enter applicable service unit or area office phone number and extension).

E. Sending Information

Whenever the facility's authorized FAX user(s) intends to send a FAX, he/she shall comply with the following:

- 1) Telephone the receiving facility to inform them that patient medical records are being FAXed, confirm the FAX number, and determine whether the FAX machine is located in a secured area. If the FAX machine is not in a secured area, request the authorized individual at the receiving facility to stand by the receiving facility's FAX machine.
- 2) Reconfirm the destination FAX number prior to transmission by checking the telephone number displayed on the FAX machine screen before transmitting the FAX.
- 3) Confirm the success of the transmission by calling the intended recipient or by checking the FAC Report.
- 4) In the event that the FAX is erroneously transmitted to the wrong FAX number and the sender is aware that this error has occurred, he/she should immediately contact the erroneous recipient and request that the FAX be destroyed.
- 5) A copy of the FAX cover page, or equivalent documentation, shall be placed in the patient's medical record. The FAX cover page, or equivalent documentation, shall include confirmation of receipt of FAX.

F. Receiving Information

Whenever the facility's authorized FAX user(s) receives an incoming medical record FAX, he/she shall comply with the following:

- 1) Remove the FAXed medical information from the FAX machine as soon as possible, once he/she is aware that the FAX has been received.
- 2) Count the number of pages received to verify the number of pages against the FAX cover page. If page(s) are missing, the sender must be contacted and requested to retransmit the document.

- 3) Read the FAX cover page and follow any instructions.
- 4) If the facility maintains an ARJ, document receipt of the FAXed document on the ARJ.
- 5) If the FAXed medical information is printed on thermal paper, the thermal paper must be photocopied. Upon photocopying the information, the thermal copy must be shredded.
- 6) Notify the intended recipient that a FAX was received.
- 7) Unless the FAXed medical information will at all times remain in a secured area, the FAXed medical information must be hand delivered or placed in a sealed envelope and delivered to the intended recipient as soon as possible.

If a FAX has been erroneously transmitted to an IHS facility, the authorized FAX machine user who received the FAX shall inform the sender of the error. The FAX must then be destroyed and these actions would be notated in the ARJ, if applicable.